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September 3, 1996
EX PARTE OR LATE FILED

Bill Canton
Secretary of the Commission
FCC
1919 M Street, NW
Room 222
Washington, DC 20554

Dear Mr. Canton:

At the suggestion of Janice Myles and in response to the issues raised in the commission's NPRM 96-221, In the Matter of Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, we address the issues raised in Notification Requirements and Authorization Requirements.

Our comments are meant to balance privacy and competitive concerns, offering a method of obtaining customer consent that ensures that the customer's wishes are reflected in the consent and which is efficient enough to allow all carriers to use without undue burden.

We propose that properly authenticated audio recordings of carefully scripted requests for oral consent and the customers' responses to those requests are the best basis for determining the actual wishes of the customer. We further suggest that such recordings be made through an independent third party, and that the third party maintain those recordings to help ensure their authenticity. Although we believe that third-party recorded oral consents are the best method of obtaining consent from many customers, we propose that this method be provided as an alternative which carriers may use as a substitute for either written consent or, if the commission chooses, consent verified by a independent third party live operator.

One method for making such recordings involves the use of a recording service bureau. In using a recording service bureau, a carrier sets up a three-way call between the customer, the carrier and the recording system. The system plays an announcement that the conversation will be recorded and then begins recording, at which point, the carrier's telephone representative explains the customer's rights with regard to CPNI usage and asks for the customer's permission to use CPNI for that customer.

After the conversation between the customer and the carrier is completed, the recording system generates an identification number, which the carrier representative enters into the customer record, and gives the number to the customer. In addition to the identification number, each recording is date and time stamped. Recordings are stored in duplicate on electromagnetic hard disks and are archived on magnetic tape each night. Recorded conversations are available for instant retrieval for four months and then retrieval within 24 hours for the next 32 months.

There is a precedent for this approach in the case of primary interexchange carrier (PIC) changes. The commission has already approved the use of independent third parties as a means of documenting oral

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customer agreements in the case of PIC changes¹. We believe that a properly designed recording process can meet the requirements set out by the commission for PIC changes, i.e. to: (1) be an independent third party, (2) operate in a location physically separate from the telemarketing representative, and (3) confirm and include appropriate verification data.

Note that audio recordings are well established as a form of evidence throughout the legal system:

Audio recordings, unlike video recordings, have long been regarded as independent, substantive evidence, and those recordings that are a fair representation of a transaction, conversation, or occurrence are generally admissible. In principle, therefore, there is no reason why audio recordings might not be used as substantive evidence in virtually every type of legal context, including, but not limited to criminal and civil lawsuits, administrative hearings, arbitrations, and local government hearings.²

A very recent example of the use of audio recordings by regulators is the Federal Trade Commission's Telemarketing Sales Rule, which provides for audio recordings as a means of documenting a customer's oral authorization to have the checking account debited.

The method described offers many advantages:

- 1) It properly records the customer's consent.
- 2) It provides a better record.
- 3) It is comparatively free from manipulation.
- 4) Records can be efficiently accessed and reviewed when necessary.
- 5) It is capable of gathering consents economically, efficiently and effectively for carriers.

These advantages are discussed in detail below:

Advantage #1: Oral notification and consent are more meaningful for many consumers.

We believe that it is important to provide both for customers to prohibit unauthorized use of CPNI and to allow authorized use, since many customers may find it convenient to deal with only one telephone company and CPNI use facilitates that.

In the NPRM, the commission notes that "Written authorization provides greater protection to both consumers and the carrier than oral authorization...". While this is may be true for people who read, there are many people for whom written communication is less desirable. There are several classes of customers for whom oral consents are a better means of ensuring customer wishes are followed:

a. Illiterate consumers

40-44 million Americans have very low levels of functional literacy.³ These people may sign a written document without understanding its meaning and purpose. In such cases, an oral consent is far more meaningful than a signed document.

b. Consumers whose primary language is not English

Between six and fourteen million people have a primary language other than English.⁴ In a oral recorded system, the carrier's representative can request the consent in the customer's primary language.

¹ 47 CFR Ch.1 (10-1-95 Edition), 96

² Gruber, Poza & Pellicano, "Audio Recordings: Evidence, Experts and Technology", Am Jur Trials, 48:1, 139-140.

³ "Survey of adult literacy", Society, Jan-Feb 1994 v31 n2 p2(2)

Alternatively, the recording system can be programmed to play pre-recorded consent requests in the preferred language of the customer, solving carrier's staffing problems in finding a sufficient numbers of language proficient telephone representatives.

c. Consumers who do not read

Finally, there are those who can read, but don't. Many customers dispose of carrier mail without actually reading it. In addition, in an age of shortened attention spans, there is simply no guarantee that the customer who signed a consent form actually read what they were agreeing to. As one commentator put it:

Perhaps more worrisome is that Americans who can read, don't. The buzzword is "aliteracy." Beckoned by countless alternatives -- notably work and TV -- Americans seem ever less willing to devote their time and attention to page after page of silent black type.⁵

Careful scripting on the part of the carrier in making the request for consent can insure that the customer knows his/her rights and that the customer's consent was intentional. We therefore suggest that the commission require that oral consents - whether recorded or live operator verified - follow a verbatim script subject to review and that they contain certain elements to insure customer comprehension. We advocate that the notification of the customer's rights and the request for CPNI use be made in the same call, since this helps insure that the customer knows both what is being requested and the options available. A sample script is included in the appendix.

We also suggest that the commission impose the same requirements in a non-English oral consent as it does in non-English direct mail for PIC changes, that is, that if the carrier's call is conducted in a specific language, that the notification and consent request also be in that language.

Advantage #2 The audio recording provides a better record.

Audio records provide a verbatim record as complete as any written authorization can. In addition, audio recordings provide better information than live operator third party verification, and even written notification and consent, such as indications of the customer's state of mind (is the customer confused? do they understand the request the carrier is making?), as well as the carrier's method of obtaining the consent. As one author noted:

From the perspective of the legal system as a whole, there is an important substantive advantage to the use of audio recordings as evidence. To the degree that an audio recording offered in evidence presents a fair and accurate aural record, it improves the overall means by which information is communicated to the trier of fact. In other words, it permits the trier of fact to directly experience a nearly exact, electronically recorded, representation of those sounds, whether speech or otherwise, which are deemed relevant and admissible. Thus, the trier of fact's direct exposure to the voice characteristics and response-time patterns of those whose voices are recorded represents a vast increase in both the quantity and quality of information communicated when compared to a witness recalling what he or she heard... As one court wrote, "Human nature and memories being what they are, the tape would ordinarily be the most accurate evidence of what occurred in the conversation."⁶

In addition, recordings remain accurate over time, compared to live operator verification which depends on human memories. Since most live operator third party verification systems use call centers whose

⁴ "Teaching immigrants English: growing needs and shrinking resources", Zimmerman, Migration World Magazine, March-June 1994 v22 n2-3 p13(4)

⁵ "America won't win till it reads more", Sherman, Fortune, Nov 18, 1991 v124 n12 p201(3)

⁶ Gruber, Poza & Pellicano, "Audio Recordings: Evidence, Experts and Technology", Am Jur Trials, 48:1, 164-165

employees handle hundreds of verification calls each week, there is little chance that the operators in these centers can recognize the "customer's" voice.

Advantage #3: Third-party recordings are comparatively free from manipulation.

By manipulation, we mean falsification, alteration, or fabrication of customer consent. Signatures may be forged or may be distorted - for example, if they are gathered by facsimile - to be unreadable.⁷

Audio recordings can also be manipulated, but manipulation of audio recordings is expensive and requires special equipment, discouraging would-be fabricators.⁸ In addition, the requirement to administer the recording equipment and maintain the recordings by a third party greatly reduces the probability of tampering. Possession by a third party also assists in laying the foundation for the admissibility of the recording as evidence, by establishing the "chain of custody".⁹

Advantage #4: Records can be efficiently accessed and reviewed when necessary

In those instances in which a customer has a question regarding his/her provision of consent, or challenges whether he or she provided such consent, the nature of the recording system allows for rapid and convenient review using any telephone. This allows carriers to play back customer consent transactions to customers or regulators very quickly, without having to fax or mail copies of documentation.

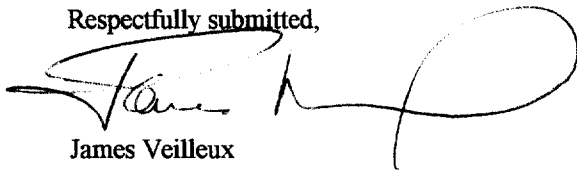
As one observer noted in a different context: "A VoiceLog audio recording [one of the suppliers of a recording service bureau] of a telephone transaction offers many advantages over other methods of verification. The recording process helps the client to understand the nature of the transaction, it provides for faster order fulfillment and allows the customer, the bank and regulators to access the information at anytime."¹⁰

Advantage #5: Recordings can gather consents economically, efficiently and effectively for carriers.

Recorded oral consents are far less expensive than other methods of documenting the customer's consent for CPNI use. For example, based on our experience, assuming an optimistic 10% response rate, gathering such consents by direct mail would cost \$6.00 per obtained consent at the very least and probably much more. By contrast, the incremental cost of recording the customer's consent as part of a call with a customer could be less than \$1. Recorded consents should also be less expensive than live operator verification, although the cost comparison is not as dramatic.

I hope these comments are useful to you.

Respectfully submitted,



James Veilleux
President, VoiceLog LLC

⁷ (For an interesting discussion of forgery techniques, see Renee Martin, "Forgery Prevention Tips", Forensic Forgeries Forum, 1996, www.forgerynet.com/tips.htm)

⁸ For an excellent discussion of manipulation of audio recordings, see Gruber, Poza & Pellicano, 168-300

⁹ Gruber, Poza & Pellicano, 563-4

¹⁰ "Accelerated Payment Systems and VoiceLog Announce Market Test Agreement", PR Newswire, August 15, 1996

Appendix #1

Sample Script

Carrier representative: Mr. Customer, there are a few items I want to go over with you that we want to record for verification purposes. Would you please hold while I activate the recording system?

Customer response.

Recording system: *Welcome to the VoiceLog telephone confirmation system. The VoiceLog system provides independent documentation of the information provided on this telephone call. After the tone, your call will be recorded until you hit the # key on the telephone. Please begin speaking after the tone.*

Carrier representative: Mr. Customer, because we will be your service provider and will have access to your account information, from to time XYZ Telecommunications Corporation and its affiliated companies may be able to offer you new products and special promotional opportunities that are tailored to your needs, based on that information. You have the right, if you wish, to tell us not to use that information for these offerings, but we would like to use the information so we can both offer you services we think are useful to you and avoid soliciting you for services that you don't need. May we use the information in your account to help develop and offer services you may be interested in?

Customer response.

Carrier representative: For verification purposes, please state your name and telephone number or numbers for the account we are discussing:

Customer response.

Carrier representative: And could you state your address?

Customer response.

Carrier representative: Thank you for your help, Mr. Customer, you may want to note the confirmation number that the system will now give us. #

Recording system: *Your VoiceLog confirmation number is XXXXXXXX.*

Carrier enters confirmation number in the customer's record.

(Note that unlike third party verification, which requests confirmation data such as date of birth or social security number, and which many consumers might find intrusive, recorded authorization can be confirmed by the voice of the customer.)